

## § 1943.29

made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA or its successor agency under Public Law 103-354 lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48288, Sept. 15, 1993]

### **§ 1943.29 Relationship between FSA loans, direct and guaranteed.**

(a) Direct FO loans may be made simultaneously with other FmHA or its successor agency under Public Law 103-354 loans, and to borrowers presently indebted to FmHA or its successor agency under Public Law 103-354, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) A direct FO may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

(c) A borrower may use the same collateral to secure two or more loans, direct or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990; 58 FR 44747, Aug. 25, 1993; 58 FR 48282, 48288, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 66 FR 7568, Jan. 24, 2001]

### **§§ 1943.30-1943.32 [Reserved]**

### **§ 1943.33 Loan approval or disapproval.**

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

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(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The Agency has certified the applicant eligible.

(ii) Funds are requested for authorized purposes.

(iii) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA or its successor agency under Public Law 103-354 431-2 may be used when they provide the necessary information.

(iv) The security is adequate.

(v) Necessary supervision is planned, and

(vi) All other pertinent requirements have been met or will be met.

(2) [Reserved]

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

### **§ 1943.34 Requesting title service.**

(a) Title clearance will be obtained as provided in subpart B of part 1927 of this chapter, when required by the Agency.

(b) When the loan is approved, the applicant will arrange with the seller to take possession of the land that is being acquired.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67481, Dec. 31, 1991; 68 FR 62224, Nov. 3, 2003]

### **§ 1943.35 Action after loan approval.**

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days

after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed \$5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA or its successor agency under Public Law 103-354 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with subpart A of part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 2018-D, a copy of which may be obtained from any FmHA or its successor agency under Public Law 103-354 office. The applicant must agree to a delayed loan closing and the same

will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 2018-D.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103-354 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA or its successor agency under Public Law 103-354 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions;

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103-354 1940-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103-354 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement

forms can readily be completed and submitted. In the latter case, a memorandum will be attached to the revised forms and sent to the State Office.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, 54789, Nov. 2, 1994]

**§§ 1943.36–1943.37 [Reserved]**

**§ 1943.38 Loan closing actions.**

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of \$10,000 or less in § 1943.19 (a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103–354 440–15, “Security Agreement (Insured Loans to Individuals).”

(2) Form FmHA or its successor agency under Public Law 103–354 440–25, “Financing Statement” or, when authorized, Form FmHA or its successor agency under Public Law 103–354 440–A25, “Financing Statement.”

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant’s financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant’s financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant’s financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan

will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103–354 443–16, “Assignment of Income from Real Estate Security,”